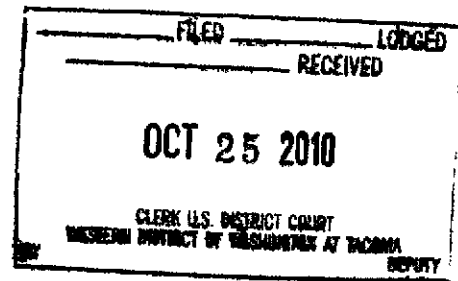


MAGISTRATE JUDGE

10-CR-05401-ORD



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONNY DAVIS,

Defendant/Petitioner.

NO. CR10-5401

FINDINGS AND ORDER ACCEPTING
DEFENDANT FOR DEFERRED
PROSECUTION, APPROVING
TREATMENT PLAN, AND DIRECTING
DEFENDANT TO TAKE TREATMENT
AS PRESCRIBED

(Clerk's Action Required)

THIS MATTER, coming on for hearing this 26th day of July, 2010, upon Defendant's Petition for Deferred Prosecution; Defendant appearing in person and by his attorney, WILLIAM R. MICHELMAN; the United States of America being represented by PAT REGAN, Special Assistant United States Attorney; the Court having examined and incorporated into the record Petitioner's Petition and Statement in support of deferred prosecution, the evaluation and treatment report prepared by A Change Counseling Services, and the files and records herein; being fully advised in the premises, does now make and enter the following:

I. FINDINGS OF FACT

A. On or about the 11th day of April, 2010, Petitioner was charged by Complaint with the offense of DUI. This offense occurred as a direct result of alcoholism/chemical dependency problems;

B. The Petitioner suffers from an alcohol problem and is in need of treatment;

C. The probability of similar misconduct in the future is great if the problem is not treated;

D. Petitioner is amenable to treatment;

E. An effective rehabilitative treatment plan is available to Petitioner through A Change Counseling Substance Abuse Program, an approved treatment facility as designated by the laws of the State of Washington, and the Petitioner agrees to be liable for all costs of this treatment program;

F. That Petitioner agrees to comply with the terms and conditions of the program offered by the treatment facility as set forth in the diagnostic evaluation from A Change Counseling Services, attached to Statement of Petitioner filed herewith, and that Petitioner agrees to be liable for all costs of this treatment program;

G. That Petitioner has knowingly and voluntarily stipulated to the admissibility and sufficiency of the facts as contained in the written police report attached to the Statement of Petitioner filed herewith.

H. That Petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing or trial on the underlying offense held subsequent to revocation of this Order Granting Deferred Prosecution and that these reports will be used to support a finding of guilt;

From the foregoing FINDINGS OF FACT, the Court draws the following:

II. CONCLUSIONS OF LAW

A. That the above-entitled Court has jurisdiction over the subject matter and Petitioner DONNY DAVIS, in this case;

B. That Petitioner's Petition for Deferred Prosecution meets the requirements of RCW 10.05 et. seq.;

C. That the diagnostic evaluation and commitment to treatment meets the requirements of RCW 10.05.150;

D. That Petitioner is eligible for deferred prosecution.

III. ORDER

Having made and entered the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is hereby

ORDERED that the defendant is accepted for deferred prosecution. The prosecution of the above matter is hereby deferred for five (5) years pursuant to RCW 10.05 et. seq., upon the following terms and conditions:

A. Petition shall be on probation for the deferral period and follow the rules and regulations of probation;

B. Petitioner shall enroll in and successfully complete the two-year treatment program recommended by A Change Counseling Services according to the terms and conditions of that plan as outlined in the diagnostic evaluation, a true copy of which is attached to the Statement of Petitioner and incorporated herein by reference. Petitioner shall not change treatment agencies without prior Probation approval;

C. The treatment facility, the A Change Counseling Services, shall file with the United States Probation Office status reports of Petitioner's compliance with treatment, monthly

1
2 during the first year of the deferred prosecution period and every three (3) months during the
3 second year. The Court may increase the frequency of these reports at its discretion;

4 D. Petitioner shall notify U.S. Probation within 72 hours of any residence change.

5 E. Petitioner shall abstain during the deferred prosecution period from any and all
6 consumption of alcoholic beverages and/or nonprescribed mind-altering drugs;

7 F. Petitioner shall not operate a motor vehicle on the public highways without a
8 valid operator's license and proof of liability insurance sufficient to comply with the state laws
9 on financial responsibility;

10 G. Petitioner shall be law abiding and shall not commit any alcohol/drug related
11 offenses or other criminal offenses during the period of deferral;

12 H. Petitioner shall notify U.S. Probation within 72 hours of being arrested,
13 questioned, or cited by Law Enforcement;

14 I. In the event that Petitioner fails or neglects to carry out and fulfill any term or
15 condition of his treatment plan or violates any provision of this Order or any rule or regulation of
16 his probation officer, upon receiving notice, the Court shall hold a hearing to determine why
17 Petitioner should not be removed from deferred prosecution and prosecuted for the offense
18 charged;

19 J. In the event the Court finds cause to revoke this deferred prosecution, the
20 stipulated police reports shall be admitted into evidence, and Petitioner shall have his guilt or
21 innocence determined by the Court;

22 K. That the Statement of Petitioner for Deferred Prosecution shall remain sealed, and
23 all subsequent reports of documents relating to his treatment information shall be sealed, to
24 maintain confidentiality of Petitioner's treatment information;

25 L. That the Department of Licensing be notified of this order accepting the Petitioner
26 for deferred prosecution;

1
2 M. Upon proof of Petitioner's successful completion of five years deferral period in
3 this Order, the Court shall dismiss the charge pending against Petitioner.
4


5
6 N. Additional conditions: _____
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9

10 DONE IN OPEN COURT this 25 day of October, 2010.

11
12 
13 UNITED STATES MAGISTRATE JUDGE

14 Presented by:

15 WILLIAM R. MICHELMAN, INC., P.S.

16 
17 _____
18 William R. Michelman, WSBA #6803
Attorney for Petitioner

19 I have received a copy of the foregoing Order of Deferred Prosecution. I have read
20 and understand its contents, and agree to abide by the terms and conditions set forth herein.

21
22 Dated: 7-21-10

23 
24 DONNY DAVIS, Petitioner

25 I certify that a copy of this signed Order was mailed to the subject treatment facility,
26 on October 29, 2010, 2010. The U.S. Probation Office was also
27 furnished a copy of this Order.
28


Clerk